



Office of the General Counsel

B-271412

June 13, 1996

The Honorable John Edward Porter
House of Representatives

Dear Mr. Porter:

By letter dated March 8, 1996, you asked whether subsection (w) of the "Assistance for the New Independent States of the Former Soviet Union" (Assistance) appropriation in the fiscal year 1996 Foreign Operations, Export Financing, and Related Programs Appropriations Act (FY 1996 Foreign Operations Appropriations Act), Pub. L. No. 104-107, 110 Stat. 704, 712 (1996) is permanent law. The FY 1996 Foreign Operations Appropriations Act appropriates a lump sum "for necessary expenses to carry out the provisions of chapter 11 of part I of the Foreign Assistance Act of 1961 [22 U.S.C. §§ 2151 et seq.] and the FREEDOM Support Act [Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, Pub. L. No. 102-511], for assistance for the new independent states of the former Soviet Union." Subsection (w) provides that "[n]otwithstanding any other provision of law, assistance may be provided for the Government of Azerbaijan for humanitarian purposes if the President determines that humanitarian assistance provided in Azerbaijan through nongovernmental organizations is not adequately addressing the suffering of refugees and internally displaced persons."

In your view, Congress intended subsection (w) to override a proscription, found in section 907 of the FREEDOM Support Act, that no United States assistance is available to Azerbaijan "until the President determines, and so reports to the Congress, that the Government of Azerbaijan is taking demonstrable steps to cease all blockades and other offensive uses of force against Armenia and Nagorno-Karabakh." 22 U.S.C. § 5812 note. Your question is whether subsection (w) applies only to the Assistance funds appropriated in the FY 1996 Foreign Operations Appropriations Act or whether it permanently overrides section 907. For reasons set forth below, we conclude that subsection (w) is applicable only in fiscal years 1996 and 1997, the 2-year period during which the Assistance appropriation is available for obligation. Subsection (w) is not a permanent statutory provision.

It is well settled that the Congress has the power to enact permanent legislation in an appropriation act. See, e.g., United States v. Dickerson, 310 U.S. 554,

561-62 (1940). However, there is a presumption that provisions in an appropriation act are effective only for the covered fiscal years because appropriation acts are by their nature nonpermanent legislation. 31 U.S.C. § 1301(c), 65 Comp. Gen. 588 (1986). Therefore, a provision in an appropriation act may not be construed as permanent legislation unless the language or nature of the provision makes it clear that the Congress intended it to be permanent. Id. at 589.

Congress most clearly indicates permanency when the provision in question includes words of futurity such as "hereafter" or "after the date of approval of this act." See, e.g., 36 Comp. Gen. 434, 436 (1956). Here, subsection (w) includes no such words of futurity. In our view, the phrase "[n]otwithstanding any other provision of law" does not constitute words of futurity and, standing alone, offers no indication as to the duration of the provision. 70 Comp. Gen. 351, 353 (1991).

Congress may also indicate that it intends an appropriation act provision to have permanent effect in other ways. See 65 Comp. Gen. at 590. However, our review of subsection (w) does not disclose any other factors that would persuade us that subsection (w) should be given permanent effect. Nor is there any indication in the legislative history of the FY 1996 Foreign Operations Appropriations Act that Congress intended subsection (w) to have an effect beyond the period of availability of the appropriation.

We trust that this answers your question. We provided this answer to Mr. Robert Bradner of your staff by telephone on March 11, 1996. If you have any questions with regard to the above matter, please feel free to call Ms. Amy Shimamura of my staff at (202) 512-5110.

Sincerely yours,

Robert P. Murphy
General Counsel